

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 352 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and  
MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ANSUBALA N CHATURVEDI

Versus

KENDRIYA VIDYALAYA

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Appearance:

Mr.I.S.Supehia, Advocate for Appellant  
Respondents served

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CORAM : MR.JUSTICE B.C.PATEL and  
MR.JUSTICE C.K.BUCH

Date of decision: 13/11/98

#### ORAL JUDGEMENT

The appellant being aggrieved by an order passed by the learned Single Judge in Special Civil Application No.1852 of 1986 on 26.6.1986 has preferred this appeal. The appellant apprehending that without following due process of law and without issuing show cause notice her services are likely to be terminated, approached this court with a prayer for issuance of writ of mandamus or

any other appropriate writ directing the respondent to deem the petitioner as a primary permanent school teacher and to accord all the benefits and privileges. The written reply is filed by Shri M.Z.Khan, Principal of Kendriya Vidhyalaya. It is the appellant's case in the present appeal also that she served respondent's school for the following period:-

1. 16.8.1982 to 31.4.1983,
2. 22.7.83 to 30.4.84,
3. 28.7.84 to 28.8.84 (honorary teacher)
4. 28.8.85 to 31.8.86 (part-time teacher)

2. With effect from 21.3.1986 the appellant being no more in service in view of the order of termination which was conveyed to her orally and in writing which she refused to sign the said order of termination and that having been not challenged, when we put a question to the learned advocate he stated fairly that the order of termination is not challenged. From the tenure of the petition it transpires that the contention was that she was appointed and her services cannot be terminated without following due procedure.

3. It is pointed out by the School Authorities that the appellant was purely temporary and on part-time basis. After following the procedure by Kendriya Vidhyalaya Sangathan the persons are either appointed or promoted. School Authorities have stated that ad-hoc appointments were made as regular staff who was not available for a particular academic year as mentioned in para 1 article 39 of the Sangathan. For such vacancies the Local Employment Exchange was required to nominate suitable candidates within the reasonable time. If the vacancies were filled up from amongst the names forwarded by the Employment Exchange. Such appointment were known as adhoc appointments and if the Employment Exchange in case was unable to forward the names, was required to issue non-availability certificate. In such a situation persons were appointed on part-time basis only. So far as direct recruitment is concerned rule 39 provides the same on the basis of all India advertisement through agency of the Central Employment Exchange Directorate General of Employment and Training and in accordance with the procedure appointments were made. It is pointed out in detail that the applications so received were scrutinized and thereafter if persons found fit were to be interviewed and if selected by that selection committee, selected person were regularly appointed on the pay roll of Sangathan and would be governed by the rules of the Sangathan. Thus in view of exigency the

Principal appointed some persons.

4. Appellant was interviewed twice by Selection Committee but was not found suitable. She came out with an allegation that with a view to accommodate relatives she was not being selected. Neither the selection procedure nor the appointment of other persons was a subject matter of the petition. It is clear from the record that the appellant was appointed as a teacher on part-time basis and temporarily. It is also clear that the appointment was made because it was not possible for the Principal to get the service of a teacher appointed after following the procedure for appointment of a teacher on regular basis. It is also clear from the record that the appellant was not continuously serving and in fact within a period of 3 years there were 4 breaks and not of a day or two. When respondent has pointed out that the procedure must be followed for direct recruitment and it must be by advertisement. Having not done so the appellant cannot insist that the appellant must be continued in the service and more particularly when the Committee did not find the appellant to be a fit person or did not select for the said post as there may be better candidates for the said post. The principle laid down in case of Dr.Meera Massey V. Dr.S.R.Mehrotra reported in (1998)3 SCC Pg.88 has deprecated the appointment of teachers on ad-hoc basis and reading the judgement it appears that in the instant case it is not possible to say that the decision in question requires to be interfered with. The appellant did not challenge the termination but her grievance was that she ought to have been continued. When the Selection Committee found her unfit and initially the appointment was on account of exigency on temporary basis. The appellant had no right to insist for the same. It is under this circumstances we concur with the view expressed by the learned Single Judge. The appeal stands dismissed.

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